

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**FERNANDO PATINO CRUZ  
aka JULIO ANGEL CASIANO RUIZ,**

**Petitioner,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

**CASE NO. 2:10-CV-0629  
CRIM. NO. 2:09-CR-112 (2)  
JUDGE FROST  
MAGISTRATE JUDGE ABEL**

**OPINION AND ORDER**

Petitioner, Fernan Patino Cruz, a federal prisoner, brought this action to vacate his conviction and set aside or correct his sentence under 28 U.S.C. § 2255. This matter is before the Court on Cruz's objections to Magistrate Judge Abel's November 22, 2011 Report and Recommendation that the petition be denied.

Petitioner Cruz alleged that his attorney told him he could not file an appeal of sentencing enhancements if his objections to the presentence investigation report were denied or his guilty plea would be revoked. He asserted that he does not speak English fluently and understood that he could not file an appeal regarding his sentence. Inconsistently, Cruz further alleged that he requested his attorney to file an appeal, and that she failed to do so. He complained that his attorney failed to consult with him regarding the filing of an appeal. Petitioner also objects to the Magistrate Judge's recommendation of dismissal of these claims on the merits and without an evidentiary hearing.

Having conducted a *de novo* review as required by 28 U.S.C. § 636(b), the Court concludes, as did the Magistrate Judge, that petitioner's inconsistent allegations here are unworthy of credit. Cruz alleges he did not know about his right to appeal, but requested his attorney file an appeal; and at sentencing, he told the Court he did not want an appeal filed on his behalf. Petitioner's objections

therefore are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**.

This action is hereby **DISMISSED**.

**IT IS SO ORDERED.**

/s/ Gregory L. Frost  
GREGORY L. FROST  
United States District Judge